

Moreover, in my opinion the construction that I have given to Section 11(5) is in accord with the intention of the legislature in accordance with the provisions of the Act. A person may be admitted by the court to practise the profession of law in Singapore if (1) he has the academic qualification prescribed by the Act; (2) he has obtained practical training as a pupil under an experienced master of the work of an advocate and solicitor for the period prescribed by the Act; (3) has attended and satisfactorily completed a course of instruction prescribed by the Board and (4) passed an examination which may be prescribed by the Board.

It cannot, in my opinion, be intended by the legislature that where all these requirements have been met by a person that he cannot be admitted to practise merely because the period covered by the Board's prescribed course of instruction falls within or overlaps the period of that person's pupillage.

It is to be observed that the Act does not lay down the duration of the course of instruction which the Board may prescribe. It may well be that the Board may find it necessary to conduct its course of instruction intermittently so that the course may spread over many months. It may well be that the Board may find it necessary to conduct its course of instruction during the evenings after normal office or business hours. In those circumstances to construe Section 11(5) so that the entire period covered by the course of instruction shall not be counted in calculating the period of pupillage would, by depriving a person who has satisfied all the prescribed requirements from being admitted earlier, be manifestly unfair and a result which could not have been intended by the legislature.

For these reasons I answered Prayers 1(a) and (b) in the negative and made a declaration in terms of Prayer 2 of the originating summons.

Order accordingly.

Solicitors: *Tan, Rajah & Cheah; M. Karthigesu.*

**YING TAI PLASTIC & METAL
MANUFACTURING (S) PTE. LTD. v.
ZAHIRIN BIN RABU**

[C.A. (Wee Chong Jin. C.J., Sinnathuray & Chua JJ.)
November 18, 1983]
[Singapore — Civil Appeal No. 37 of 1982]

Workmen's Compensation — Injury in the course of employment — Scope of section 33 of Workmen's Compensation Act 1975 — Application for compensation under Workmen's Compensation Act can be withdrawn — Workmen's Compensation Act, 1975, ss. 18, 33(1)(a) & 33(2)

The plaintiff/respondent lost four fingers of his right hand as a result of an accident in the course of his employment. Subsequently, he received a letter from the Commissioner of Labour which enclosed a document similar to Exhibit P2 and the document Exhibit P3, which was then unfilled except for the figures 7353/81 inserted against "NWCR" and 25/5/81 inserted against "Accident On". The plaintiff went to the Commissioner's office on July 7, 1981. He claimed that he did not know what the contents of Exhibits P2 and P3 were. The plaintiff was illiterate both in Malay and English.

The plaintiff claimed damage for personal injuries received by him in the course of his employment with the defendants. The preliminary issue raised by the defence was whether the plaintiff was precluded from bringing any action for damages in the High Court. Rajah J. gave judgment in favour of the plaintiff ([1982] 2 M.L.J. 145). The defendants appealed.

Held, dismissing the appeal: (1) on the evidence the learned judge was right in coming to the conclusion that in fact the plaintiff had not applied to the Commissioner for compensation under the provisions of the Act; (2) in the construction of a consolidating Act (in this case, the Workmen's Compensation Act 1975), there is a particularly strong presumption that it does not alter the existing law;

(3) the scheme of the Workmen's Compensation Act 1975 is not to abrogate a workman's common law cause of action but to enable him, if he wishes, to get a speedy remedy for the injury suffered by him. The said Act does not prohibit the withdrawal of the application for compensation. As soon as the application for compensation is withdrawn the right to maintain an action revives and the workman can then proceed with his action for damages in the court.

Cases referred to:

- (1) *R. v. Governor of Brixton Prison, ex p. De Demko* [1959] 1 Q.B. 268.
- (2) *National Assistance Board v. Wilkinson* [1952] 2 Q.B. 648

I COURT OF APPEAL.

Karuppan Chettiar and *Myint Soe* for the appellants.

S.B. Shah for the respondent.

Cur. Adv. Vult.

Chua J. (delivering the Judgment of the Court):
The Respondent (Plaintiff) claimed damages for personal injuries received by him in the course of his employment with the Appellants (Defendants).

It was ordered that the issue (as raised in the Defence) whether the Respondent was precluded from bringing any action for damages in the High Court, be tried as a preliminary question of law.

The preliminary issue was heard by Rajah J. and the learned Judge held that the Respondent was not precluded from maintaining the action.

The Appellants appealed. The appeal was dismissed with costs but we reserved judgment on the interpretation of section 33(1) of the Workmen's Compensation Act, 1975 (the Act).

The facts were these. The Appellants who carry on the business of manufacturing plastic products for the electronic industry, employed the Respondent as a machine operator. The Respondent is illiterate both in Malay and English. On May 23, 1981, the Respondent, in the course of and arising out of his employment, met with an accident as a result of which he lost four fingers of his right hand. He reported the accident to his office, and was admitted to the Singapore General Hospital where he was treated for his injuries.

Some time after he left the hospital and while at home he received a letter from the Commissioner of Labour which had enclosed in it a document similar to Ex. P2 and the document Ex.P3, which was then unfilled except for the figures 7353/81 inserted against "NWCR" and 25/5/81 inserted against "Accident On".

He went to the Commissioner's office some four or five days after receipt of the letter, but before he did so he returned to work with the Appellants. He did not speak to any one at his employers' office about the letter. He said that when he went to the Commissioner's office on June 7, 1981, he did not know what the contents of the Ex. P2 and Ex. P3 were. He also said that at the office of the Commissioner no one interpreted or explained Ex. P2 or Ex. P3 to him and that he affixed his right thumb print to Ex. P3 in the belief that he was acknowledging the receipt of the Commissioner's letter to him.

Ex. P3 as it now stands reads:—

NWCR 7353/81

"Commissioner for Labour
Accident on 25/5/81

8 Jul 1981

I, Zahrin bin Rabu (I/C No.: 1717481 I
Date of Birth: 24/10/64) residing at 3 Lorong Lihai,
Singapore 2470 wish to claim compensation for injuries
sustained in the abovementioned accident under
Workmen's Compensation Act.

2. I wish to claim against the employer/ employer's
insurer.

7 Jul 1981

(RTP of Zahrin bin Rabu)"

On January 12, 1982, the Respondent's solicitors wrote to the Commissioner to put on record that the Respondent had not applied for workmen's compensation in that he had signed the letter of July 7, 1981, under the misrepresentation that it was an acknowledgement slip and asked the Commissioner to treat the said letter as cancelled. (Ex. D1).

On January 29, 1982 the Commissioner replied:

"Since your client, Zahrin bin Rabu wishes to claim damages under Common Law in respect of the above accident, please note that this office will take no further action on this matter." (Ex. D2).

Section 33 of the Act provides:

"33.- (1) Nothing contained in this Act shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted an action for damages in respect of that injury in any court against his employer or if he has recovered damages in respect of that injury in any court from his employer, and no action for damages shall be maintainable in any court by a workman against his employer in respect of any injury —

(a) if he has applied to the Commissioner for compensation under the provisions of this Act; or

(b) if he has recovered damages in respect of the injury in any court from any other person.

(2) If an action is brought within the time specified in section 11 in any court to recover damages independently of this Act for injury caused by any accident and it is determined in the action or on appeal that the injury is one for which the employer is not liable but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court shall, if the workman so chooses, proceed to assess such

compensation and may deduct therefrom all or any part of the costs which, in its judgment, have been caused by the workman instituting the action instead of proceeding under this Act."

Two issues were raised before the learned Judge:—

- (1) whether the Respondent by having appended his thumb print to Ex. P3 "has applied to the Commissioner for compensation under the provisions of this Act";
- (2) if the answer to (1) is in the affirmative whether the Respondent was precluded from bringing any action for damages in the High Court.

The learned Judge was satisfied that the Respondent was completely illiterate and that, unless someone had interpreted and explained the contents of Ex. P2 and Ex. P3 to him in Malay, he would not have known what the contents of Ex. P2 were. The learned Judge was also satisfied that when the Respondent arrived at the office of the Commissioner he was not aware of the contents of Ex. P2 and Ex. P3 and that the officer who attended to him had not seen to it that the documents were interpreted to the Respondent through a proper interpreter. The learned Judge found the Respondent to be a truthful witness and he accepted the Respondent's evidence in regard to Ex. P2 and P3 and found that the Respondent appended his right thumb print to Ex. P3 in the belief that what he was doing was to acknowledge the receipt of a letter from the Commissioner. The learned Judge therefore was of the view that the Respondent had not applied to the Commissioner for compensation under the provisions of the Act.

On the second issue, the learned Judge was of the view that "a workman's unilateral voluntary application for compensation under the Act can in the same way voluntarily and unilaterally be withdrawn by the workman thus enabling him to proceed and so maintain his action for damages in any Court."

We were of the view that on the evidence the learned Judge was right in coming to the conclusion that in fact the Respondent had not applied to the Commissioner for compensation under the provisions of the Act. We therefore dismissed the appeal, but reserved judgment on the interpretation of section 33(1) of the Act.

Counsel for the Appellants submits that the mere application to the Commissioner by a workman for compensation under the provisions of the

- A Act operates to abrogate an injured workman's cause of action at common law for damages with the resultant loss of his common law right of action for damages against the employer. Counsel further submits that once an application for compensation is made to the Commissioner it cannot be withdrawn.
- B

The Act is "An Act to consolidate and amend the law relating to the payment of compensation to workmen for injury suffered in the course of their employment."

- C In the construction of a consolidating Act, there is a particularly strong presumption that it does not alter the existing law. In *R. v. Governor of Brixton Prison, ex p. De Demko*⁽¹⁾ Lord Evershed M.R., dealing with section 31(1)(a) of the Supreme Court of Judicature (Consolidation) Act 1925 said (at pp. 280, 281):
- D

"One has to begin by the consideration that the Judicature Act 1925, is expressed to be a consolidating Act; and one does not look for substantial changes in the law, or the jurisdiction, in a consolidating Act."

- E Counsel for the Appellants seeks to put an interpretation to section 33(1)(a) which, if his arguments were to prevail, would in effect make an alteration to the common law. There is a presumption against changes in the common law. It is presumed that the legislature does not intend to make a substantial alteration in the law beyond which it expressly declares, (per Lord Goddard C.J. in *National Assistance Board v. Wilkinson*⁽²⁾). Lord Devlin in the same case said:
- F

"It is a well-established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion."

G

- H Under the Act the worker, unlike the employer, is not obliged to inform the Commissioner of the accident, nor is he obliged to apply to the Commissioner for compensation in respect of it. The act of applying for compensation is purely a voluntary one on the part of the workman.

The employer's liability to pay compensation under the Act is absolute. The worker (unlike under the common law) does not have to show negligence on the part of the employer. The Act in fact gives the worker rights against his employer which he did not have under the common law.

I Section 33 provides for a limitation of the workman's right of action but it does not specifically say that the workman's common law right of

action for damages is automatically extinguished if he applies to the Commissioner for compensation under the Act. What it does say is that a workman shall not maintain an action for damages if an application for compensation has been made by him to the Commissioner.

It seems to us that it was never the intention of the legislature to deprive a workman of his common law rights against his employer. The scheme of the Act is not to abrogate a workman's common law cause of action but to enable him, if he wishes, to get a speedy remedy for the injury suffered by him. The Act sees to it that he does not get a double benefit – both compensation under the Act and damages under the common law for the one injury (Sec. 18).

A workman's cause of action in tort against his employer immediately vests in him under the common law and he has the right to bring proceedings in the court and this right continues in him until such time as he may be debarred from doing so by the law of limitation.

Under section 33(1)(a) the worker is debarred from bringing a common law action for damages so long as there is an application by the workman before the Commissioner for compensation. But this debarment in no way affects the cause of action already vested in him. The Act does not prohibit the withdrawal of the application for compensation. As soon as the application for compensation is withdrawn, the right to maintain an action revives and the workman can then proceed with his action for damages in the court. The workman's right to compensation under the Act lies dormant while he pursues his common law action but should he lose the action he may choose to ask the court, under section 33(2), to assess compensation under the Act.

The Act does not expressly declare that an application to the Commissioner for compensation under the Act *ipso facto* abrogates a workman's common law right for damages.

We are in agreement with the learned Judge that the workman can withdraw his application for compensation under the Act and proceed and maintain his action for damages in the courts.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; S.B. Shah.*

A MALAYSIAN REPORTS

LEE AH TEE v. ONG TIOW PHENG & ORS.

[F.C. (Wan Suleiman, Mohamed Azmi & Hashim Yeop A. Sani F.JJ.) October 20, 1983]

B [Johor Bahru – Federal Court Civil Appeal No. 186 of 1982]

Company Law – Application by shareholder alleging mismanagement, misappropriation, fraud, embezzlement and general disregard for the rules – Application for appointment of receiver and for company to be wound up – Application dismissed – Companies Act, 1965, s.181.

C *Practice and Procedure – Application for adjournment – Refusal – Discretion of trial judge.*

D In this case the appellant took out a petition under section 181 of the Companies Act, 1965 as a shareholder of a company and alleged mismanagement, misappropriation of company funds, fraud, embezzlement and general disregard for the rules of the company. The Judicial Commissioner who heard the application dismissed it on the ground that it had no real merits. He found that there was no ground to order the company to be wound up and he also found no evidence of fraud or oppression. The appellant appealed and relied on two grounds. First he contended that the learned Judicial Commissioner was wrong to deny him the adjournment he asked for and second he contended that the learned Judicial Commissioner was wrong to dismiss the petition on the merits.

E Held: (1) this was not really a case of refusing an application for adjournment but a case of refusing to further adjourn after a number of adjournments granted previously. In this case the learned Judicial Commissioner exercised his discretion correctly in refusing a further adjournment after all the previous adjournments;

F (2) on the evidence before him it was little surprise that the learned Judicial Commissioner found no merit in the petition.

G Cases referred to:

- (1) *K. Ratnasingam v. Kow Ah Dek & Anor.* [1983] 2 M.L.J. 297.
- (2) *Dick v. Piller* [1943] 1 All E.R. 627.
- (3) *Maxwell v. Keun & Ors.* [1928] 1 K.B. 645.
- (4) *Mohanlal Gordhandas Sheth v. Ban Guan & Co.* [1956] M.L.J. 13.

H

FEDERAL COURT.

Wong Swee Min and (subsequently) *Miss Cheong Yoke Ping* for the appellant.

H. Ball and *Ng Seng Kang* for the respondent.

I

Cur. Adv. Vult.

Hashim Yeop A. Sani F.J. (delivering the judgment of the Court): The appellant took out a Petition under Section 181 of the Companies Act, 1965 as a shareholder of the United Chinese